



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR PART 52

[EPA-HQ-OAR-2016-0098; FRL-9943-90-OAR]

Findings of Failure to Submit State Implementation Plans Required for Attainment of the 2010 1-Hour Primary Sulfur Dioxide National Ambient Air Quality Standard (NAAQS)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking a final action to find that several states have failed to submit State Implementation Plans (SIPs) to satisfy certain nonattainment area planning requirements of the Clean Air Act (CAA) for the 2010 1-Hour Primary Sulfur Dioxide (SO₂) National Ambient Air Quality Standard (NAAQS). The purpose of the development and implementation of nonattainment area SIPs is to provide for attainment of the NAAQS as expeditiously as practicable following the designation of an area as nonattainment. These findings of failure to submit establish certain CAA deadlines for the EPA to impose sanctions if a state does not submit a SIP addressing those requirements and for the EPA to promulgate a Federal Implementation Plan (FIP) to address any outstanding SIP requirements.

DATES: The effective date of this action is **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

FOR FURTHER INFORMATION CONTACT: General questions concerning this notice should be addressed to Dr. Larry D. Wallace, Office of Air Quality Planning and Standards, Air

Quality Policy Division, Mail Code: C504-2, 109 TW Alexander Drive, Research Triangle Park, NC 27709; by telephone (919) 541-0906; or by email at wallace.larry@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Notice and Comment Under the Administrative Procedure Act (APA)

Section 553 of the APA, 5 U.S.C. 553(b)(3)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. The EPA has determined that there is good cause for making this final agency action without prior proposal and opportunity for comment because no significant EPA judgment is involved in making a finding of failure to submit SIPs, or elements of SIPs, required by the CAA, where states have made no submissions, or incomplete submissions, to meet the requirement. Thus, notice and public procedures are unnecessary. The EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(3)(B).

B. How can I get copies of this document and other related information?

The EPA has established a docket for this action under Docket ID No. EPA-HQ-OAR-2016-0098 for this action. All documents in the docket are listed on <http://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information or information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form through <http://www.regulations.gov>.

C. Where do I go if I have a specific state question?

For questions related to specific states mentioned in this notice, please contact the appropriate EPA Regional office:

Regional Offices	States
EPA Region I: Dave Conroy, Chief, Air Program Branch, Air Programs Branch, EPA New England, 1 Congress Street, Suite 1100, Boston, MA 02203-2211.	New Hampshire
EPA Region III: Cristina Fernandez, Associate Director, Office of Air Program Planning, EPA Region III, 1650 Arch Street, Philadelphia, PA 19103-2187.	Pennsylvania, West Virginia
EPA Region IV: R. Scott Davis, Chief, Air Planning Branch, EPA Region IV, Sam Nunn Federal Center, 61 Forsyth Street, 12 th Floor, Atlanta, GA 30303-8960.	Tennessee, Kentucky
EPA Region V: John Mooney, Chief, Air Programs Branch, EPA Region V, 77 West Jackson Street, Chicago, IL 60604.	Michigan, Ohio
EPA Region VI: Guy Donaldson, Chief, Air Planning Section, EPA Region VI, 1445 Ross Avenue, Dallas, TX 75202-2733.	Louisiana
EPA Region VII: Michael Jay, Chief, Air Programs Branch, EPA Region 7, 11201 Renner Blvd., Lenexa, Kansas 66219.	Iowa
EPA Region VIII: Monica Morales, Chief, Air Program Manager, Air Quality Planning Unit, EPA Region VIII Air Program, 1595 Wynkoop St. (8P-AR), Denver, CO 80202-1129.	Montana
EPA Region IX: Matt Lakin, Air Planning Office, EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105.	Arizona

D. How is the preamble organized?

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II. Background

In June 2010, the EPA promulgated a new 1-hour primary SO₂ NAAQS of 75 parts per billion (ppb), which is met when the 3-year average of the annual 99th percentile of 1-hour daily maximum concentrations does not exceed 75 ppb, as determined in accordance with Appendix T of 40 Code of Federal Regulations (CFR) part 50. *See* 40 CFR 50.17(a)-(b). On August 5, 2013,

the EPA, as part of a first round of area designations, initially designated 29 areas in 16 states as nonattainment for the 2010 SO₂ NAAQS. 78 FR 47191, codified at 40 CFR part 81, subpart C. These initial area designations had an effective date of October 4, 2013.

Areas designated nonattainment for the SO₂ NAAQS are subject to the general nonattainment area planning requirements of CAA section 172 and to the SO₂-specific planning requirements of subpart 5 of part D of Title I of the CAA (sections 191 and 192). All components of the SO₂ part D nonattainment area SIP, including the emissions inventory, attainment demonstration, reasonably available control measures (RACM) and reasonably available control technology (RACT), reasonable further progress (RFP) plan, and contingency measures, are due to the EPA within 18 months of the effective date of designation of an area under CAA section 191. Thus, the nonattainment area SIPs for areas designated as of October 4, 2013, were due on April 4, 2015. These SIPs are required to demonstrate that their respective areas will attain the NAAQS as expeditiously as practicable, but no later than 5 years from the effective date of designation, or October 4, 2018.

III. Consequences of Findings of Failure to Submit

If the EPA finds that a state has failed to make the required SIP submittal or that a submitted SIP is incomplete, then CAA section 179(a) establishes specific consequences, including the imposition of mandatory sanctions for the affected area. Additionally, such a finding also triggers an obligation under CAA section 110(c) for the EPA to promulgate a FIP no later than 2 years from the finding of failure to submit, if the affected state has not submitted, and the EPA has not approved, the required SIP submittal. The statutory attainment date of October 4, 2018, applies to all areas designated nonattainment effective as of October 4, 2013,

and not otherwise redesignated to attainment, regardless of the status of the SIP or FIP that applies to that area.

If the EPA has not affirmatively determined that a state has made the required complete SIP submittal for an area within 18 months of the effective date of this rulemaking, then, pursuant to CAA section 179(a) and (b) and 40 CFR 52.31, the offset sanction identified in CAA section 179(b)(2) will apply in the affected nonattainment area. If the EPA has not affirmatively determined that the state has made a complete submission within 6 months after the offset sanction is imposed, then the highway funding sanction will apply in the affected nonattainment area, in accordance with CAA section 179(b)(1) and 40 CFR 52.31. The sanctions will not take effect, if, within 18 months after the date of these findings, the EPA finds that the affected state has made a complete SIP submittal addressing the deficiency for which the finding was made. Additionally, if the state makes the required SIP submittal and the EPA takes final action to approve the submittal within 2 years of the effective date of these findings, the EPA is not required to promulgate a FIP for the affected nonattainment area, pursuant to CAA section 179(a) and 40 CFR 52.31.

IV. Findings of Failure to Submit for States that Failed to Make a Nonattainment Area SIP Submittal

As of the date of signature of this action, six states have made complete SIP submittals for 14 SO₂ nonattainment areas designated effective on October 4, 2013.¹ In this action, the EPA

¹ These six states and 14 areas are: Hillsborough County, FL; Nassau County, FL; Lake County, OH; Muskingum River, OH; Steubenville, OH-WV (OH portion); Marion County, IN; Morgan County, IN; Vigo County, IN; South West Indiana, IN; Rhinelander, WI; Jefferson County, MO; Jackson County, MO; Lemont, IL; and, Pekin, IL.

is making a finding of failure to submit SO₂ nonattainment area SIP submittals for 16 areas in 11 states.² The EPA is finding that the states and areas listed in the table below have failed to submit a complete SIP submittal required under part D of Title 1 of the CAA.

The EPA notes that the Billings, Montana nonattainment area is listed in this findings notice because the state has failed to submit a complete SIP for the area. However, the EPA has proposed both a clean data determination and a redesignation of the area to attainment in a separate action (81 FR 11727, March 7, 2016). Should the Billings, Montana nonattainment area be redesignated to attainment within the timeframes described above, the state will not be required to submit a nonattainment SIP for the area and no sanctions will take effect for the area. Likewise, the Campbell-Clermont multi-state nonattainment area is listed in this findings notice because Ohio and Kentucky have failed to submit complete SIPs for the area. However, both states have submitted redesignation requests for their respective parts of the Campbell-Clermont multi-state nonattainment area, seeking to have that area redesignated as attainment. The EPA has not yet acted on these requests. Should the EPA propose and then finalize redesignation of the area to attainment within the timeframes described above, neither state will be required to submit a nonattainment SIP for the area and no sanctions will take effect.

² There are currently 29 nonattainment areas in 16 states. However, the sum totals of areas and states with complete SIP submittals versus those without complete submittals are 30 and 17, respectively. The difference in these totals can be attributed to the fact that multiple SIP submittals are required for the two multi-state SO₂ nonattainment areas. For example, the EPA received a complete SIP submittal for the OH portion of the Steubenville, OH-WV multi-state nonattainment area, as noted in footnote #1. However, because WV has not made a complete SIP submittal for the area, WV is included in this findings notice for the Steubenville, OH-WV area. The area thus is counted both as an area for which a state (OH) made a complete SIP submittal and as an area for which a state (WV) still owes a complete SIP submittal.

States and SO₂ Nonattainment Areas Affected by These Findings of Failure to Submit

Regional Office	State	Nonattainment Area
Region I	New Hampshire	Central New Hampshire: Hillsborough County (p) Merrimack County (p) Rockingham County (p)
Region III	Pennsylvania	Allegheny: Allegheny County (p)
Region III	Pennsylvania	Beaver: Beaver County (p)
Region III	Pennsylvania	Indiana: Armstrong County (p) Indiana County (p)
Region III	Pennsylvania	Warren: Warren County (p)
Region III	West Virginia	Marshall: Marshall County (p)
Region III	West Virginia	Steubenville (OH-WV): Brooke County, WV (p)
Region IV	Kentucky	Campbell-Clermont (OH-KY): Campbell County, KY (p)
Region IV	Kentucky	Jefferson County: Jefferson County (p)
Region IV	Tennessee	Sullivan County: Sullivan County (p)
Region V	Michigan	Detroit: Wayne County (p)
Region V	Ohio	Campbell-Clermont (OH-KY): Clermont County, OH (p)
Region VI	Louisiana	St. Bernard Parish: St. Bernard Parish
Region VII	Iowa	Muscatine: Muscatine County (p)
Region VIII	Montana	Billings: Yellowstone County (p)
Region IX	Arizona	Hayden: Gila County (p) Pinal County (p)
Region IX	Arizona	Miami Gila County (p)

Note: Partial counties are indicated in the table above as (p).

V. Environmental Justice Considerations

The EPA believes that the human health or environmental risks addressed by this action will not have disproportionately high or adverse human health or environmental effects on minority, low-income, or indigenous populations because it does not affect the level of protection provided to human health or environment under the SO₂ NAAQS. The purpose of this rule is to make findings that the affected states named have failed to submit the required SIPs to provide for timely attainment of the 1-hour primary SO₂ NAAQS, which results in certain CAA-required deadlines for actions to provide for such attainment. In finding that certain states have failed to submit a complete SIP that satisfies the nonattainment area plan requirements under section 172 and subpart 5 of part D of Title I of the CAA (sections 191 and 192) for the 1-hour primary SO₂ NAAQS, this action does not directly affect the level of protection provided for human health or the environment. However, it is intended that the required actions and deadlines resulting from this notice will lead to greater protection for U.S. citizens, including minority, low-income, or indigenous populations, by reducing exposure to high ambient concentrations of SO₂.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was, therefore, not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the provisions of the PRA. This final rule does not establish any new information collection requirement apart from what is already required by law. This rule relates to the requirement in the CAA for states to submit SIPs under section 172 and subpart 5 of part D of Title I of the CAA (sections 191 and 192) which address the statutory requirements that apply to areas designated as nonattainment for the SO₂ NAAQS.

C. Regulatory Flexibility Act (RFA)

I certify that this rule will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. The rule is a finding that the named states have not submitted the necessary SIP requirements for nonattainment areas to meet the requirements of part D, title I of the CAA.

D. Unfunded Mandates Reform Act of 1995 (UMRA)

This action does not contain any unfunded mandate as described in UMRA 2 U.S.C. 1531-1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. This rule finds that several states failed to submit a complete SIP that satisfies the nonattainment area plan requirements under section 172 and subpart 5 of part D of Title I of the CAA (sections 191 and 192) for the 1-hour primary SO₂ NAAQS. No tribe is subject to the requirement to submit an implementation plan under section 172 or under subpart 5 of part D of Title I of the CAA. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2-202 of the Executive Order. This action is not subject to Executive Order 13045 because it is a finding that several states have failed to submit a complete SIP that satisfies the nonattainment area plan requirements under section 172 and subpart 5 of part D of Title I of the CAA for the 1-hour primary SO₂ NAAQS and does not directly or disproportionately affect children.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income, or indigenous populations. In finding that several states have failed to submit a complete SIP that satisfies the nonattainment area plan requirements under section 172 and subpart 5 of part D of Title I of the CAA for the 1-hour primary SO₂ NAAQS, this action does not directly affect the level of protection provided to human health or the environment. The results of this evaluation are contained in the Section V of this preamble titled “Environmental Justice Considerations.”

K. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

L. Judicial Review

Section 307(b)(1) of the CAA indicates which federal Courts of Appeal have venue for petitions of review of final agency actions by the EPA under the CAA. This section provides, in part, that petitions for review must be filed in the United States Court of Appeals for the District of Columbia Circuit (i) when the agency action consists of "nationally applicable regulations promulgated, or final actions taken, by the Administrator," or (ii) when such action is locally or regionally applicable, if "such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination."

The EPA has determined that this final rule consisting of findings of failure to submit certain of the required SIP provisions is "nationally applicable" within the meaning of section 307(b)(1). This final agency action affects 16 nonattainment areas across the country that are located in 11 states, eight of the 10 EPA Regional offices, and eight different federal circuits, and multiple time zones. In addition, the rule addresses a common core of knowledge and analysis involved in formulating the decision and a common interpretation of the requirements of 40 CFR 51 appendix V applied to determining the completeness of SIPs in states across the country.

This determination is appropriate because in the 1977 CAA Amendments that revised CAA section 307(b)(1), Congress noted that the Administrator's determination that an action is of "nationwide scope or effect" would be appropriate for any action that has "scope or effect beyond a single judicial circuit." H.R. Rep. No. 95-294 at 323 - 324, reprinted in 1977 U.S.C.C.A.N. 1402-03. Here, the scope and effect of this action extends to the five judicial circuits that include the states across the country affected by this action. In these circumstances, section 307(b)(1) and its legislative history authorize the Administrator to find the rule to be of "nationwide scope or effect" and, thus, to indicate that venue for challenges lies in the D.C. Circuit. Accordingly, the EPA is determining that this rule is of nationwide scope or effect. Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the District of Columbia Circuit within 60 days from the date this final action is published in the *Federal Register*. Filing a petition for review by the Administrator of this final action does not affect the finality of the action for the purposes of judicial review nor does it extend the time within which a petition for judicial review must be filed and shall not postpone the effectiveness of such rule or action. Thus, any petitions for

review of this action must be filed in the United States Court of Appeals for the District of Columbia Circuit within 60 days from the date this final action is published in the *Federal Register*.

List of Subjects in 40 CFR Part 52

Environmental protection, Approval and promulgation of implementation plans, Administrative practice and procedures, Air pollution control, Incorporation by reference, Intergovernmental relations, and Reporting and recordkeeping requirements.

Dated: March 10, 2016.

Janet G. McCabe,
Acting Assistant Administrator.
[FR Doc. 2016-06063 Filed: 3/17/2016 8:45 am; Publication Date: 3/18/2016]